

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)
)
 v.) CR. NO. 2:05CR290-MHT
)
EDDIE ANDREW GORDON)

PLEA AGREEMENT

DEFENSE COUNSEL: KEVIN L. BUTLER

ASSISTANT U.S. ATTORNEY: TOMMIE BROWN HARDWICK

COUNT AND STATUTE CHARGED:

Count 1 18 U.S.C. § 922(g)(1)

COUNT PLEADING PURSUANT TO PLEA AGREEMENT:

Count 1 18 U.S.C. § 922(g)(1)

PENALTY BY COUNT - MAXIMUM PENALTY:

Count 1, 18 USC § 922(g)(1)

Sentence of not more than \$250,000 and a term of imprisonment of not more than 10 years, or both. Special Assessment of \$100.00 and a term of supervised release of not more than 3 years.

ELEMENTS OF THE OFFENSE:

18 U.S.C. 922(g)(1)

FIRST: That the Defendant knowingly possessed a firearm in or affecting interstate commerce, as charged; and

SECOND: That before the defendant possessed the firearm the defendant had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year, that is a felony offense.

Tommie Brown Hardwick, Assistant United States Attorney, and Kevin L. Butler, attorney for the defendant, pursuant to the provisions of Rule 11(c)(1)(C), Federal Rules of Criminal Procedure, as Amended, have, with the authorization of the undersigned defendant, heretofore entered into discussions with a view towards reaching a pretrial conclusion of the charges pending in the Indictment herein and a Plea Agreement has been reached by said parties in the following respects.

GOVERNMENT'S PROVISIONS

1. Upon entering a plea of guilty by the defendant to the offense charged in the Indictment, the attorney for the Government will do the following:

a. The government agrees that the defendant will be sentenced the mid range of the guidelines after the United States Sentencing Guidelines ("guidelines") have been calculated by the United States Probation Officer and approved by the Court.

b. The government agrees that there are no other motions for downward departure applicable in this case. If the defendant files a motion for downward departure, or should the Court in its discretion using the United States Sentencing Guidelines as advisory, sentence the defendant below the recommended guidelines range, this plea agreement will become void.

c. The government agrees that the defendant will be allowed to withdraw his guilty plea if it is determined that the defendant is an armed career criminal under U.S.S.G. § 4B1.4.

2. The government agrees that the defendant should receive a two level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a). In addition, the government will file a motion for a one level reduction under U.S.S.G. § 3E1.1(b). However, the defendant will not receive

any acceptance of responsibility if the defendant commits another federal, state or local offense after the dates of the present offense; violates any of the conditions outlined in the Commentary to §3E1.1, or in any way violates her terms of release or supervision if applicable.

3. The United States reserves the right to inform the Court and the Probation Department of all facts pertinent to the sentencing process, including all relevant information concerning the offense and the defendant's background.

4. The government agrees that an enhancement of 4 levels pursuant to 2K2.1(b)(5), (use of a firearm in connection with another felony offense), does not apply in this case based upon the government's reading of the facts in this case and pertinent parts of the Alabama Criminal Code.

DEFENDANT'S PROVISIONS

5. The defendant agrees to the following:

- a. To plead guilty to Count 1 of the Indictment;
- b. The defendant agrees that there are no other motions for downward departure applicable in this case. If the defendant files a motion for downward departure, or should the Court in its discretion using the United States Sentencing Guidelines as advisory, sentence the defendant below the recommended guidelines range, this plea agreement will become void.
- c. The defendant will be allowed to withdraw his guilty plea if it is determined that the defendant is an armed career criminal under U.S.S.G. § 4B1.4.

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

Understanding that 18 U.S.C. § 3742 provides for appeal by a defendant of the sentence under certain circumstances, Defendant expressly waives any and all rights conferred by 18 U.S.C. § 3742 to appeal the sentence on any other ground and waives the right to attack the sentence in any

post-conviction proceeding, except the defendant does not waive the right to appeal based upon ineffective assistance of counsel and prosecutorial misconduct.

Notwithstanding the above, Defendant reserves the right to file a direct appeal for an upward departure from the applicable Guidelines range which the sentencing court specifies at the time of sentencing as having been imposed pursuant to either USSG § 4A1.3 (from criminal history) or 5K2.0 (from offense level). Defendant understands and agrees that this waiver as to all other Guidelines findings would still be in force and effect notwithstanding the appealability of an upward departure.

Further, the parties agree that nothing in this agreement shall affect the United States' right and/or duty to appeal as set forth in 18 U.S.C. § 3742(b). However, if the United States appeals Defendant's sentence pursuant to 18 U.S.C. § 3742, Defendant is released from this waiver.

FACTUAL BASIS

d. The defendant understands the nature of the charges to which the plea is offered involves proof as follows:

That on or about the 22nd day of November, 2004, in Montgomery, Alabama, within the Middle District of Alabama, EDDIE ANDREW GORDON, defendant herein, having been convicted in the Circuit Court of Barbour County, Alabama of the following offenses: (1) Sodomy First Degree on or about September 23, 1985, under case number CC085-115; (2) Unlawful Breaking and Entering a Vehicle, on or about September 18, 1987, under case number CC-87-101, and (3) Robbery Third Degree, on or about September 25, 1989, under case number CC-88-22, crimes punishable by imprisonment for a term exceeding one year under the laws of the State of Alabama, knowingly did possess, in and affecting commerce, a firearm, that is, a F.I.E. .22 caliber

semiautomatic pistol, Model E-22, serial number AB088458, in violation of Title 18, United States Code, Section 922(g)(1). The parties stipulate that the firearm had traveled in interstate commerce.

DEFENDANTS' UNDERSTANDING AND ACKNOWLEDGMENT

6. The defendant, before entering a plea of guilty to Count 1 of the Indictment as provided for herein by said Plea Agreement, advises the Court that:

a. The discussions between the attorney for the government and the attorney for the defendant towards reaching an agreed plea in this case have taken place with the defendant's authorization and consent.

b. The defendant further understands that pursuant to Title 18, United States Code, Section 3013, the \$100.00 assessment is to be paid by the defendant on the date of sentencing.

c. The defendant understands that the defendant has a right to be represented by an attorney at every stage of the proceedings against the defendant herein and is represented by the defendant's undersigned attorney.

d. The defendant understands that the defendant has the right to plead not guilty and has the right to be tried by a jury and, at a trial thereof, has the right to the assistance of counsel, the right to confront and cross-examine witnesses against the defendant, the right to call witnesses in the defendant's own behalf, and the right not to be compelled to incriminate the defendant, and that if the defendant enters a plea of guilty herein, there will not be a further trial of any kind and that by the entry of such a plea, the defendant waives the right to a trial by jury or to a trial before the Court.

e. The defendant further understands that in entering a plea of guilty herein, the Court may ask questions about the offense to which the plea is entered and further understands that if the defendant answers these questions under oath, on the record, and in the presence of counsel, which

questions and answers would be recorded, that the answers may later be used against the defendant in a prosecution for perjury or false statement if the answers are not truthful.

f. Defendant further understands and advises the Court that the plea agreement as set forth herein and the plea to be entered by the defendant as a result thereof is voluntary on the defendant's part and is not the result of any force or threats or of any promises apart from the aforesaid Plea Agreement. The defendant further advises the Court that the Plea Agreement set forth herein is the result of prior discussions between the attorney for the Government and the attorney for the defendant, all conducted with the defendant's authorization, knowledge and consent.

g. The defendant further advises the Court that the defendant's understanding of this Plea Agreement is as set forth in this document.

h. The defendant further advises the Court that it is understood that the Government can only enter an agreement between the parties which is not binding on the Court, and that the defendant understands that after the entry of the guilty plea, the defendant will have a right to withdraw the plea should the Court refuse to accept the plea agreement pursuant to Rule 11(c)(1)(C).

i. The defendant further advises the Court that the defendant understands and has been advised that evidence of a plea of guilty, later withdrawn or an offer to plead guilty to the crimes charged in the Indictment herein, or of statements made in connection with and relevant to said plea or offer to plead, shall not be admissible in any civil or criminal proceedings against the defendant. However, the defendant does understand that evidence of a statement made in connection with and relevant to a plea of guilty, later withdrawn, or an offer to plead guilty to the crimes charged in the Indictment herein, is admissible in a criminal proceeding for perjury or false statement when the statement was made by the defendant under oath, on the court record, and in the presence of

counsel.

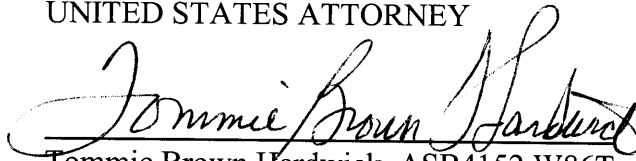
j. The Defendant is satisfied that defense counsel has been competent and effective in representing defendant.

7. The defendant understands that the U.S. Probation Office will prepare a presentence investigation report for the Court. The Probation Officer will consider defendant's conduct related to the offense to which the plea is offered, as well as the defendant's criminal history. The offense level or criminal history category as calculated by the Probation Officer and determined by the court may differ from that projected by defendant's counsel or the U.S. Attorney. In the event that the court determines defendant's offense level or criminal history category to be higher than defendant anticipated, the defendant will have a right to withdraw the plea pursuant to Rule 11(c)(1)(C).

This 31st day of July, 2006.

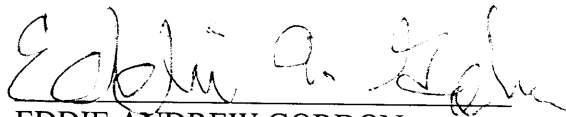
Respectfully submitted,

LEURA G. CANARY
UNITED STATES ATTORNEY


Tommie Brown Hardwick, ASB4152 W86T
Assistant United States Attorney

I have read the foregoing Plea Agreement, understand the same, and the matters and facts set forth therein accurately and correctly state the representations that have been made to me and accurately set forth the conditions of the Plea Agreement that has been reached.

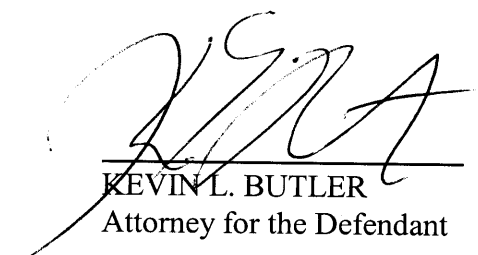
IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE AND CORRECT AND THAT I AM SATISFIED THAT I HAVE RECEIVED COMPETENT ADVICE AND REPRESENTATION FROM MY DEFENSE COUNSEL, KEVIN L. BUTLER.



EDDIE ANDREW GORDON
Defendant

8-9-06

Date



KEVIN L. BUTLER
Attorney for the Defendant

8-9-06

Date